

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-222816 **DATE:** June 17, 1986
MATTER OF: Little Susitna Company

DIGEST:

1. Protest contending that the award of an architectural and engineering (A-E) contract for work to be performed in Alaska to a non-Alaskan firm violates section 8078 of the Department of Defense (DOD) Appropriations Act of 1986, which requires, under certain circumstances, that firms which perform work in Alaska hire Alaskan residents, is denied. The act does not preclude the award of A-E contracts for work to be performed in Alaska to non-Alaskan firms, but, in effect, requires non-Alaskan firms to hire Alaskan residents for work performed in Alaska under DOD contracts.
2. Protester's new and independent ground of protest is dismissed where the later-raised issue does not independently satisfy rules of GAO's Bid Protest Regulations.
3. Whether a contract requirement is met during performance of the contract is a matter of contract administration which GAO will not consider.

Little Susitna Company (Susitna), located in Anchorage, Alaska, protests the Department of the Navy's selection of Wesley Bull & Associates, Inc. (Wesley), to perform architectural and engineering (A-E) services in connection with the repair and restoration of a communication cable plant at Adak, Alaska. The protester contends that the award to Wesley, a non-Alaskan firm, is improper because it violates section 8078 of the Department of Defense (DOD) Appropriations Act of 1986 (Act), Pub. L. No. 99-190, 99 Stat. 1214-1215 (1985), which allegedly prohibits an award of a DOD contract for work in Alaska to a non-Alaskan firm.

The protest is denied in part and dismissed in part.

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On November 22, 1985, and January 3, 1986, the Navy published in the Commerce Business Daily (CBD) a request for expression of interest from A-E firms to perform the above-mentioned services. The procurement was conducted under special procedures prescribed in the Brooks Act for the acquisition of A-E services. See 40 U.S.C. §§ 541-544 (1982). In accordance with the CBD announcement and Brooks Act procedures, interested A-E firms were to submit a statement of qualifications, on standard form (SF) 255, so that the Navy could determine the firms' capabilities relative to the seven selection criteria stated in the CBD announcement. Wesley was considered the most qualified firm to perform the work and was selected for contract award in accordance with Brooks Act procedures.

Susitna argues that the selection of Wesley violated section 8078 of the Act because Wesley is not an Alaskan firm. Section 8078 of the Act provides:

"Notwithstanding any other provision of law, each contract awarded by the Department of Defense in fiscal year 1986 for construction or services to be performed in whole or in part in a State which is not contiguous with another State [Alaska or Hawaii] and has an unemployment rate in excess of the national average rate of unemployment as determined by the Secretary of Labor shall include a provision requiring the contractor to employ, for the purpose of performing that portion of the contract in such State that is not contiguous with another State, individuals who are residents of such State and who, in the case of any craft or trade, possess or would be able to acquire promptly the necessary skills: Provided, That the Secretary of Defense may waive the requirements of this section in the interest of national security."

We disagree with Susitna's contention that section 8078 of the Act prohibits the award of this contract to a non-Alaskan firm. In our view, section 8078 of the Act merely requires that each contract awarded by DOD in fiscal year 1986 for construction or services to be performed in Alaska shall include a provision requiring the contractor to employ, for the purpose of performing that portion of the contract in Alaska, individuals who are residents of Alaska. Thus, where, as here, the Act applies, the DOD contracting activity awarding the contract must include a provision for hiring Alaskan residents for work to be performed in Alaska.

In this connection, the Navy, in its report on the protest, has indicated that it intends to comply with the requirements of section 8078 of the Act by inserting the following clauses into Wesley's contract prior to award:

"RESTRICTIONS ON EMPLOYMENT OF PERSONNEL (JAN 1986)

"(a) The contractor shall employ, for the purpose of performing that portion of the contract work in the State of Alaska, individuals who are residents of the state, and who, in the case of any craft or trade, possess or would be able to acquire promptly the necessary skills to perform the contract.

"(b) The Contractor agrees to insert the substance of this clause, including this paragraph (b), in each subcontract."

Thus, the Navy is complying with the Act's requirement to include an Alaskan resident hiring provision in the protested contract and, therefore, the contract award does not violate section 8078 of the Act.

In its comments on the agency report, filed more than 5 weeks after Susitna's initial protest was filed, Susitna raises for the first time, the contention, based on conjecture, that the individuals listed in Wesley's SF 225 qualifications statement all reside in the state of Washington. Susitna argues, therefore, that if this contention is true, Wesley would have to change its design team in order to comply with the requirement for hiring Alaskan residents to perform the work in Alaska, thereby making Wesley's SF 255 an inaccurate reflection of its qualifications. In this case, Susitna asserts the selection of Wesley based on the SF 255 improper.

Susitna's newly raised protest contention is untimely. Our Bid Protest Regulations require that a protest be filed within 10 working days after the basis of the protest is known or should have been known. See 4 C.F.R. § 21.2(a)(2) (1986). Where a protester initially files a timely protest and later supplements it with new and independent grounds for protest, the later-raised allegations must independently satisfy these timeliness requirements. Siska Construction Company, Inc., B-218428, June 11, 1985, 85-1 C.P.D. ¶ 669. Our Regulations do not contemplate the unwarranted piecemeal

development of protest issues. See Baker Company, Inc., B-216220, Mar. 1, 1985, 85-1 C.P.D. ¶ 254. Since Susitna's newly raised contention is based solely on Susitna's suspicions and could have been raised when Susitna filed its protest, it is untimely and will not be considered. Baker Company, Inc., B-216220, supra.

Finally, to the extent Susitna is claiming that Wesley will not meet the contractual requirement to hire Alaskan residents for work to be performed in Alaska, we dismiss this aspect of the protest. Once a contract has been awarded, the question of whether a contractor actually meets its contractual obligations is a matter of contract administration which is the responsibility of the procuring agency and is not encompassed by our bid protest function. 4 C.F.R. § 21.3(f)(1) (1986); Right Away Foods Corp.--Reconsideration, B-219676.4, Mar. 24, 1986, 86-1 C.P.D. ¶ 287.

We deny the protest in part and dismiss the remainder.

for Seymour Spas
Harry R. Van Cleve
General Counsel